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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,
Petitioner,

v.

UNITED MINE WORKERS OF AMERICA; DISTRICT 20, UNITED MINE WORKERS OF AMERICA; and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Respondents

Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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The respondents, United Mine Workers of America ("UMWA"); District 20, United Mine Workers of America; and Local 8982, United Mine Workers of America, oppose the Petition for a Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err in holding that a *preliminary* Boys Markets injunction was too broad where it went far beyond the work stoppage giving rise to the employer's complaint, as well as the dispute underlying it, to prohibit the unions who represented the striking employees from engaging in any work stoppages in violation of the applicable collective bargaining agreement for the life of that agreement?

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STATEMENT OF THE CASE

This is a petition for review of a decision of the United States Court of Appeals for the Fifth Circuit (per Brown, C.J., and Wisdom and Coleman, JJ.), reversing two orders entered by the United States District Court for the Northern District of Alabama, J. Foy Guin, Jr., J. One of the district court orders had granted a preliminary injunction against all three of the respondent unions; the other found respondents District 20 and Local 8982 in civil contempt of that injunction. Petitioner United States Steel Corporation ("Steel") seeks review so that this Court might "revise"[1] the decision of the Court of Appeals.

The petitioner is the nation's largest producer of steel, and is the owner and operator of numerous coal mines throughout the country, including the Concord Mine in Jefferson County, Alabama. Respondent UMWA is an international labor organization headquartered in Washington, D.C., and is the collective bargaining representative of the great majority of this nation's coal miners, including the approximately 800 miners employed at the Concord Mine. Respondent District 20 is an autonomous intermediate labor organization whose territorial jurisdiction consists of all parts of the State of Alabama, including the Concord Mine; respondent Local 8982 is the local union representing UMWA members at the Concord Mine.

A. The Preliminary Injunction

This litigation began on November 13, 1973, when petitioner Steel filed a suit for injunctive relief and damages against the three respondent unions in the District Court. Steel alleged that a work stoppage had begun at the Concord Mine at 12:01 a.m. that morning over a safety dispute that was arbitrable under the terms of the collective bargaining agreement there in force, the National Bituminous

[1] Petition at 14 (conclusion).

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Coal Wage Agreement of 1971 ("the 1971 Agreement"). According to the complaint, only 50 of 200 miners had reported to work on the 12:01-8:00 a.m. shift, and only 40 per cent of the workforce had reported at 8:00 a.m. The complaint also alleged that there had been two other "strikes" over arbitrable issues since November 12, 1971, the date the 1971 Agreement became effective. The District Court granted a temporary restraining order at 5:43 p.m. that afternoon, finding that there was "a strike in violation of the collective bargaining agreement," and ordering the respondents' members, as well as the respondents themselves, to cease "from engaging in a strike or work stoppage at plaintiffs Concord Mine or continuing to engage in said work stoppage." By midnight that night, everyone was back to work. However, the temporary restraining order was continued in force pending further hearings.

This litigation then remained inactive for nearly six months, until Thursday, May 9, 1974, when petitioner Steel filed a motion alleging that approximately 90 per cent of the Concord miners on that morning's 8:00 a.m. shift had refused to work over an arbitrable job bidding dispute. Steel's motion asked that all three of the respondents be held in civil contempt of the earlier temporary restraining order, or alternatively, that the earlier order be amended to "expressly" cover the new dispute. The District Court chose to amend the restraining order, and issued its amended order at 2:32 p.m. on the afternoon of May 9. A show cause order was issued the following day (Friday) against respondents District 20 and Local 8982, and the mine returned to work at 12:01 a.m. on Monday, May 13.

The following week, on May 17, 1974, the District Court held a hearing on a preliminary injunction. And on May 30, 1974, a preliminary injunction was granted against all three of the respondents, based upon "the verified complaint and the verified motion, the answer and oral testimony of-

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fered at the hearing, documentary evidence and argument of counsel." That injunction, however, was not limited to a prohibition against revival of the November 12 and May 9 work stoppages pending a final hearing on the merits. Instead, the district court issued a much broader decree, incorporating verbatim the words of the collective bargaining agreement's arbitration clause, to prohibit the three respondent unions from stopping work:

> "over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement not mentioned in said agreement, or over local trouble of any kind."

This "preliminary" injunction was to remain in effect "during the pendency of this civil action until midnight, November 11, 1974"—the date the 1971 Agreement was to and did expire.

In support of its decree, the district court found that for purposes of temporary relief, there had been seven (7) short "strikes" over arbitrable disputes during the 2½ year life of the 1971 Agreement. Three of these alleged "strikes" had not been mentioned in either Steel's complaint or its motion to amend the temporary restraining order (which the District Court considered as an amendment to the complaint), and were alleged for the first time at the preliminary injunction hearing. With respect to each of these three, Steel claimed at hearing that when no one reported for work during the 24 hours[2] following a death at the mine, there somehow was a "strike," and that that "strike" was somehow over an arbitrable dispute. With respect to the other four "strikes" alleged, the District Court found that

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[2] Steel's Statement of the Case alleges (Petition at 5) that a "strike" following a "3/24/72" fatality had lasted "72" hours. But the District Court found that work had only stopped for "a working day." (Petition at A24)

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there had been two work stoppages over arbitrable job bidding disputes lasting 24 (December 1972) and 64 (May 1974) hours, and two over arbitrable safety disputes[3] lasting 32 (March 1973) and 24 hours (November 1973).[4] In addition, the District Court indicated its belief that the arbitration clause of the 1971 Agreement was "so broad as to encompass any situation that could possibly arise *between the parties* [emphasis added] except a good-faith walkout because of a hazard to personal safety."[5] Timely notices of appeal were filed by the three respondents.

B. The Civil Contempt Order

Approximately three weeks after issuance of the preliminary injunction, on June 17, 1974, the District Court found that respondents District 20 and Local 8982 were in civil contempt. On June 17, miners across Alabama ceased their

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[3] See the Petition at A30, n. 2, for the Court of Appeals discussion of the safety aspects of the November 1973 dispute.

[4] On July 18, 1972, the Third Circuit had held that the 1968 UMWA Agreement "should not be construed as providing for compulsory arbitration of safety disputes." *Gateway Coal Co.* v. *UMWA*, 466 F.2d 1157, 1160. Its decision was later reversed by this Court, but not until January 8, 1974, or after the two safety stoppages herein. *Gateway Coal Co.* v. *UMWA*, 414 U.S. 368. Thus, at the time of the two safety stoppages herein, the applicable case law told the Concord miners they had a right to stop work over safety disputes.

[5] But see the Petition at 13, para. 2, where Steel now argues that its employees' grievances with it were arbitrable under the 1971 Agreement, but that Steel's grievances with its employees were not. See also *U.S. Steel Corp.* v. *UMWA*, 394 F.Supp. 345 (W.D. Pa. 1975), *on remand from* 414 U.S. 1150 (1974), where at Steel's urging a district court held exactly that.

In reality, the 1971 Agreement specifically provided that disputes which were "national in character" were to be settled by "free collective bargaining" rather than arbitration (Article XX), that "prior practice and custom not in conflict" with the Agreement was to continue (Article XIX, section (b)), and that the UMWA International could designate a total of up to ten working days as non-working "memorial periods" (Article XVI, section (k)).

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work for one day, and converged upon Birmingham to picket the stockholders' meeting of the Southern Corporation, in protest of Southern's importation of South African coal for use by its Alabama Power Company subsidiary. As Steel admitted, and as the Court of Appeals found (Petition at A47-A48), the miners' action was aimed "at the national policy of this country's permitting the importation of South African coal," and was not aimed at Steel. Nevertheless, the District Court found that while the miners had not ceased work because of any dispute with Steel, their stopping of work had aggrieved Steel, and thereby created an arbitrable dispute over the question of whether the miners had a right to stop work to engage in their protest. Therefore, said the Court, the miners had no right to stop work and engage in their protest until after Steel's alleged grievance[7] had been resolved through arbitration.

Of course, the miners had *not* stopped work "over" the question the District Court found to be arbitrable—the question of whether they had a right to stop work to protest the importation of South African coal. They had stopped work "over" the question of whether South African coal should be imported, *not* "over" the question of whether they had a right to stop work.

The District Court's civil contempt order was issued on the very morning of the South African coal protest (June 17), and stated that unless the miners ceased their protest and returned to work by 4:00 p.m. that afternoon, District 20 and Local 8982 would be fined $12,000. Forty-seven (47) of 219 employees reported on the 4:00 p.m. shift, and the entire midnight shift reported, but the District Court imposed the full $12,000 fine anyway. District 20 and Local 8982 filed timely notices of appeal.

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[7] Steel never filed a contract grievance. Indeed, Steel now declares that it had no right to do so. See note 5 *supra*.

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C. The Court of Appeals Decision

As previously noted, the Court of Appeals for the Fifth Circuit reversed both the preliminary injunction order and the civil contempt order on appeal. To use the Court of Appeals' own words, the District Court's preliminary injunction was invalid because it

> "was both overbroad (by reason of its prospectivity) and vague (because it substituted nebulous contractual terms for specific acts)."

(Petition at A45, n. 19) The contempt order was likewise invalid, both because "a void preliminary injunction does not carry civil contempt penalties" (Petition at A50-A51), and because the South African coal stoppage "was not over an arbitrable issue" (Petition at A47).

More specifically, the Court of Appeals held that the breadth of the preliminary injunction conflicted with this Court's holding in *Boys Markets, Inc.* v. *Retail Clerks Local 770,* 398 U.S. 235 (1970). The Court of Appeals observed that this Court had taken great pains to make it clear that "not every strike . . . is enjoinable under *Boys Markets,* nor even every strike over an arbitrable issue." It then held that district courts cannot issue injunctions prohibiting work stoppages over future disputes that have not yet arisen, because they will not know whether such stoppages will be enjoinable until when and if they do occur. The Court noted that if such injunctions were allowed, unions would be forced "to litigate the applicability of *Boys Markets* in a contempt proceeding, a situation strongly reminiscent of 'government by injunction'." (Petition at A43-A44) The Court further noted that Section 9 of the Norris-LaGuardia Act, 29 U.S.C. §109, requires that labor injunctions prohibit only the "specific act or acts" the employer or union is complaining of. (Petition at A43-A44)

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REASONS FOR DENYING THE WRIT

Petitioner Steel asks this Court to review the question of whether the district court could issue "a prospective injunction" on the facts of this case. (Petition at 2, 1. 28-30) The requested writ should be denied for the following reasons:

I. THE CHALLENGED INJUNCTION WAS INTERLOCUTORY IN NATURE

Petitioner Steel asks this Court to review a Court of Appeals order vacating a preliminary injunction—a temporary injunction issued pending a final hearing on the merits of petitioner's allegations. But an order vacating a nonfinal judgment is rarely a proper matter for this Court to review, and no rare factor requiring special review is even alleged here. As this Court stated in *American Construction Co.* v. *Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 384 (1893), no writ of certiorari should issue "to review a decree of [a] circuit court of appeals on appeal from an interlocutory order, unless necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the case."[8] See *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R. Co.*, 389 U.S. 327, 328 (1967); *Cobbledick* v. *United States*, 309 U.S. 323, 324-25 (1940); *Hamilton Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 257-58 (1916).

II. THERE IS NO CONFLICT OF DECISION

Petitioner Steel errs in asserting that the decision below conflicts with decisions of the Third, Seventh, and Tenth Circuits. The question considered below was that of the permissible scope of a *preliminary* Boys Markets injunction. However, Steel cites Seventh and Tenth Circuit decisions

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[8] It should be noted that the 1971 Agreement expired on November 12, 1974, and that any sort of injunctive relief to enforce it is therefore no longer appropriate. The only question still outstanding is that of damages.

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dealing with the permissible scope of a *permanent* Boys Markets injunction—an injunction issued after a final hearing on the merits, after a defendant has had an opportunity to make full use of discovery procedures, and after the defendant has otherwise been able to prepare its full defense.[9] See *Old Ben Coal Co.* v. *UMWA Local 1487*, 500 F.2d 950, 951 (7th Cir., Aug. 2, 1974); and *CF&I Steel Co.* v.

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[9] If the respondent unions had been able to prepare a complete defense before the preliminary injunction hearing herein, the results in the District Court might well have been different.

For example, the respondents did not know prior to hearing that Steel planned to allege that there were "strikes" whenever the miners did not report for work during the 24 hours following a death in the mine. If they had known, the respondents could have shown that since time immemorial, coal mines have traditionally been closed for a 24 hour mourning period following a death, and that a failure to report for work when the mine is closed can hardly be called a "strike."

Furthermore, the respondents could also have shown that during two of the three mourning periods involved in this case, parts of the Concord Mine were closed by "imminent danger" orders issued by federal mine inspectors under section 104(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §814(a). See Bureau of Mines Order No. 1-JB (issued March 23, 1972, at 10:15 a.m., and terminated at 7:30 a.m. on March 24, 1972) and Bureau of Mines Order No. 3-D.O.M. (issued March 7, 1973, at 12:15 p.m., partially modified at 3:05 p.m. on March 8, and terminated at 8:00 a.m. on March 15). If Steel had tried to operate despite those orders, it and its supervisors would have been guilty of a federal crime punishable by a fine of up to $25,000, imprisonment for up to a year, or both. 30 U.S.C. §§819(b) & (c).

Because allegations like these were advanced in the aftermath of *Boys Markets*, the current collective bargaining agreement between Steel and the UMWA, the National Bituminous Coal Wage Agreement of 1974, includes an express provision stating (Article XXII, section (k)):

> "work shall cease at any mine on any shift during which a fatal accident occurs, and the mine shall remain closed on all succeeding shifts until the starting time of the next regularly scheduled work of the shift on which the fatality occurred."

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UMWA Local 9856, 507 F.2d 170, 172 (10th Cir. 1974). In fact, in *Freeman Coal Mining Corp.* v. *UMWA District 12,* 500 F.2d 1405 (7th Cir., July 31, 1974), a preliminary injunction as broad as that herein was "affirmed," but remanded with instructions that its scope be narrowed to deal only with the work stoppage giving rise to the employer's complaint, by the same Seventh Circuit panel that was to decide *Old Ben* just two days later.[10] The differences between preliminary and permanent relief are well known,[11] and require rejection of Steel's claim of decisional conflict with *Old Ben* and *CF&I.*[12]

Nor can it be said that there is decisional conflict with the Third Circuit's recent decision in *U.S. Steel Corp.* v. *UMWA,* —F.2d—, 91 LRRM 3031 (March 16, 1976, as amended April 6, 1976). The Third Circuit did deal with a broad preliminary injunction in its *U.S. Steel* case, but it vacated that injunction in its entirety and remanded, hold-

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[10] The *Freeman* decision was issued as an unpublished order under Seventh Circuit Rule 28, which authorizes unpublished orders and provides that such orders are not to be cited as precedents within the Circuit.

[11] Preliminary relief is, of course, designed solely to preserve the status quo pending a final decision on the merits. Accordingly, "different standards of proof and of preparation may apply to the emergency hearing as opposed to the full trial." *Pughsley* v. *3750 Lake Shore Drive Cooperative Building,* 463 F.2d 1055, 1057 (7th Cir. 1972) (per Stevens, J.). To obtain a preliminary injunction, a plaintiff "need not show that he is certain to win." Wright and Miller, *11 Federal Practice and Procedure: Civil,* §2948, at 452 (1973). "While the probability of success on the merits is a factor to be considered on a motion for preliminary injunction, such an application 'does not involve a final determination of the merits', but rather 'the exercise of a sound judicial discretion on the need for interim relief.'" *Industrial Bank of Washington* v. *Tobriner,* 132 U.S. App. D.C. 51, 54, 405 F.2d 1321, 1324 (1968), citing *Public Service Commission of Wisconsin* v. *Wisconsin Telephone Co.,* 289 U.S. 67, 70-71 (1933).

[12] In any event, the injunctive decree approved in *CF&I* was much narrower than that issued by the District Court here. See 507 F.2d at 171, 173.

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ing that "the evidence" before the district court did not "warrant" relief going beyond the work stoppage giving rise to the litigation.[13] 91 LRRM at 3042, 3045-46. "[T]he injunction was both overbroad and insufficiently specific." 91 LRRM at 3043. In short, the Third Circuit has never affirmed an order granting a Boys Markets injunction, preliminary or permanent, of the scope of the preliminary injunction vacated by the Fifth Circuit herein.

III. THE COURT OF APPEALS DECISION IS SUSTAINABLE ON UNCHALLENGED ALTERNATIVE GROUNDS

Petitioner Steel only seeks review of that part of the Court of Appeals' decision holding that a preliminary "prospective injunction" could not be issued on the facts herein. (Petition at 2, 1. 28-30) However, the Court of Appeals set aside the preliminary injunction not only because of its holding that the preliminary injunction was too broad, but also because of its holding that the injunction was too "vague." (Petition at A45, n. 19; see also *U.S. Steel Corp.* v. *UMWA*, 91 LRRM 3031, 3042 n. 18 (3d Cir. 1976))

Similarly, the Court of Appeals found that the civil contempt order was not only void because the underlying injunction was too broad, but also because the underlying injunction was too vague, and because the dispute over Southern Corporation's importation of South African coal was not arbitrable.[14] (Petition at A47-A50)

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[13] In separate opinions, each of the three members of the *U.S. Steel* panel indicated, in *dicta*, their feelings about so-called "prospective" Boys Markets injunctions. And all differed. Compare Judge Gibbons' opinion at 91 LRRM 3042-3043, Judge Rosenn's opinion at 91 LRRM 3045-3047, and Chief Judge Seitz' opinion at 91 LRRM 3048.

[14] Steel concedes that the arbitrability of the South African coal protest relates "to the contempt adjudication only," and "therefore" has "nothing to do with the question presented herein." (Petition at 6, n. 1)

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Thus, even if this Court were to find that a preliminary "prospective injunction" could have been issued on the facts of this case, the Court of Appeals decision would have to be affirmed on other, unchallenged, grounds. This Court does not grant certiorari to review questions posed so abstractly. *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 183-184 (1959).

IV. THE COURT OF APPEALS DECISION IS CLEARLY CORRECT

1. Petitioner argues that the decision below was in error. But most of the petitioner's argument is irrelevant, for it deals with what can happen in a situation where a district court has found that an arbitration clause applies to "any dispute" arising during the life of a collective bargaining agreement, and where a district court has entered such a finding in a judgment entitled to res judicata effect in subsequent litigation. (Petition at 10-12) Here, on the other hand, there is no judgment entitled to res judicata effect, as the district court issued nothing more than an interlocutory injunction.[15]

Nor did the district court find, even preliminarily, that "any dispute" was arbitrable under the 1971 Agreement. The preliminary injunction merely reiterated the words of the arbitration clause, and the district court's opinion indicated a belief that the arbitration clause only applied to disputes "between the parties,"[16] and did not prohibit "a good faith walkout because of a hazard to personal safety."[17]

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[15] See *G.&C. Merriam Co.* v. *Saalfield*, 241 U.S. 22, 28 (1916) ("[I]t is familiar law that only a final judgment is res judicata as between the parties.").

[16] See also the Court of Appeals' decision at Petition A47-A48, and *Barnes & Tucker Co.* v. *UMWA*, 338 F.Supp. 924, 927 (W.D. Pa. 1972) (dispute between UMWA members and the UMWA International not arbitrable under 1971 Agreement).

[17] See 29 U.S.C. §143; *Gateway Coal Co.* v. *UMWA*, 414 U.S. 368, 385 (1974).

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(Petition at A10, para. 7) Furthermore, Steel now contends that its grievances with its employees were not arbitrable,[18] and the 1971 Agreement itself excluded disputes "national in character" from arbitration.[19]

2. It is clear that the Court of Appeals' decision is totally correct standing by itself, quite apart from petitioner's inability to mount any relevant attack upon it. In *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235, 253 (1970), this Court created what was termed a "narrow" exception to §4 of the Norris-LaGuardia Act, 29 U.S.C. §104, which prohibits federal district courts from enjoining strikes growing out of labor disputes. Specifically, this Court held that injunctive relief would be appropriate where a strike is "over a grievance which both parties are contractually bound to arbitrate," provided that an injunction would also "be warranted under ordinary principles of equity." This Court held that a district court cannot issue such an injunction "until it first holds" that a collective bargaining agreement requires arbitration of a dispute causing a strike, and until the court has been able to "consider whether issuance of an injunction would be warranted" under normal equity principles. 398 U.S. at 253-54.

Clearly, the Court of Appeals did not err in obeying this Court's *Boys Markets* command, and holding that a district court cannot enjoin a strike over an allegedly arbitrable dispute "until it first holds" that all of the *Boys Markets* criteria for such relief are met. That is, before it can issue a Boys Markets injunction, a district court must first deter-

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[18] Petition at 13, para. 2; see n. 5 & 7 *supra*.

[19] See n. 5 *supra*; *CF&I Steel Corp.* v. *UMWA Local 9856*, 507 F.2d 170, 173 n. 9 (10th Cir. 1974); *Lewis* v. *Benedict Coal Corp.*, 259 F.2d 346, 351 (6th Cir. 1958) (per Stewart, J.), *aff'd equally divided*, 361 U.S. 459 (1960). See also *Peggs Run Coal Co.* v. *UMWA District* 5, 85 LRRM 2161 (3d Cir. 1973) (panel), *aff'd equally divided en banc*, 500 F.2d 1400 (1974) (5-5).

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mine that a work stoppage is in fact "over" the dispute the employer alleges that it is over, that the actual dispute is an arbitrable one, and that the normal prerequisites for equitable relief are met. A given work stoppage may not be enjoinable because the employer lacks "clean hands," because of an absence of irreparable harm, because the alleged underlying dispute is not arbitrable, or because the stoppage is not "over" the alleged underlying dispute at all.[20] As the Court of Appeals succinctly put it,

> "It is not every strike which is enjoinable under Boys Markets, nor even every strike over an arbitrable issue."

(Petition at A43)

Obviously, then, an injunction against "all strikes" or "all strikes over arbitrable disputes" is overbroad, even where a district court completely and correctly describes the scope of the arbitration clause, as it prohibits federally protected activity[21] that is simply unenjoinable. Furthermore, as the Court of Appeals noted, an order of that scope requires a defendant union charged with violation of such an order "to litigate the applicability of *Boys Markets* in a contempt proceeding, a situation strongly reminiscent of 'government by injunction'." (Petition at A44)

All of this is not to say that res judicata is inapplicable in *Boys Markets* litigation. (See Petition at 11) Where, unlike here, an employer has obtained a final judgment finding that a particular dispute is arbitrable, nothing in *Boys Markets* prevents that judgment from being given res

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[20] See, *e.g.*, *Anheuser-Busch, Inc.* v. *Teamsters Local 633*, 511 F.2d 1097, 1099-1100 (1st Cir. 1975), *cert. denied*, 423 U.S. 875; *Detroit Newspaper Publishers Ass'n* v. *Detroit Typographical Union No. 18*, 471 F.2d 872, 875 (6th Cir. 1972), *cert. denied*, 411 U.S. 967 (1973); *Pittsburgh Pressmen's Union No. 9* v. *Pittsburgh Press Co.*, 479 F.2d 607, 609-10 (3rd Cir. 1973).

[21] 29 U.S.C. §157.

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judicata effect in subsequent litigation between the same parties arising during the remaining life of the collective bargaining agreement. But before the employer is able to obtain a subsequent injunction, the employer should still have to prove that a subsequent work stoppage is truly "over" a dispute of the kind that has been found to be arbitrable, and that the normal prerequisites for equitable relief have been met. The employer should still have to have "clean hands," and should still have to be suffering irreparable injury.

3. Alternatively, the Court of Appeals' decision is correct because the injunction below was unlawfully vague. As the Court of Appeals found, the District Court merely transplanted language from the collective bargaining agreement to the injunction, and

> "A collective bargaining agreement . . . is nothing but a precise document: the parties themselves are often unsure of what it means. Indeed, the special nature of the collective bargaining agreement is the very reason for the arbitration clause."

(Petition at A46) See *CF&I Steel Corp.* v. *UMWA Local 9856,* 507 F.2d 170, 173 incl. n. 8 (10th Cir. 1974); see also *Schmidt* v. *Lessard,* 414 U.S. 473, 476 (1974); and Rule 65(d) of the Federal Rules of Civil Procedure.

Furthermore, the injunction herein did not indicate whether it was meant to enshrine the District Court's views of the scope of the contractual arbitration clause as enforceable without further inquiry, or whether future contempt defendants could exhonorate themselves by convincing the District Court—or a Court of Appeals—that its initial views were erroneous. See also *U.S. Steel Corp.* v. *UMWA,* 91 LRRM 3031, 3042-43 (3d Cir. 1976) (discussing other vagueness difficulties likewise presented here).

This Court has held that the injunctive specificity re-

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quirements of Civil Rule 65(d) "are no mere technical requirements," and that injunction "defendants [are] never to be left to guess at what they are forbidden to do." *Schmidt* v. *Lessard*, 414 U.S. 473, 476 (1974); *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 75 (1967). Yet the respondents here were left to do exactly that.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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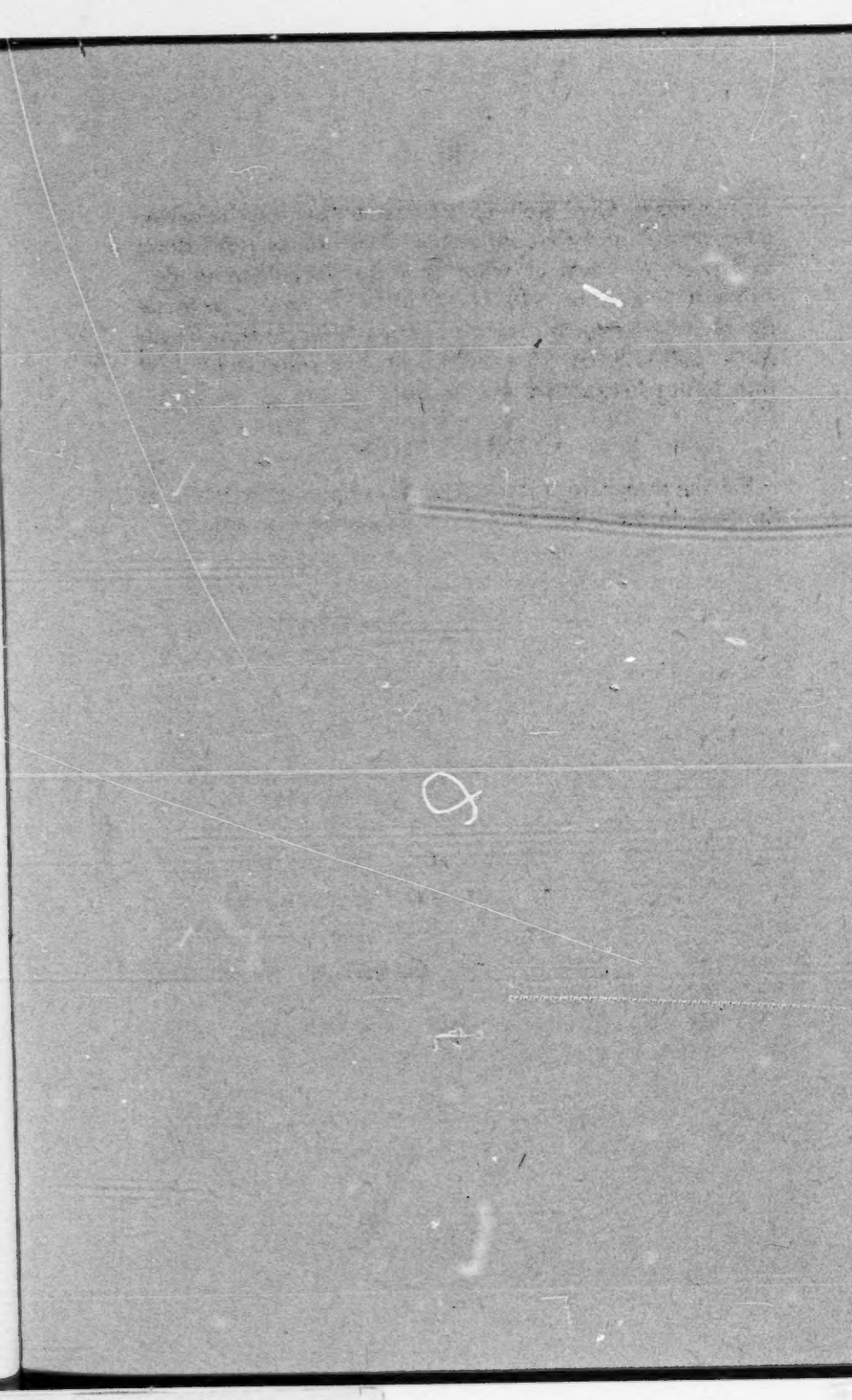

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